

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,980	03/31/2004	Edward Wells Knowlton	1000 -010	5920
25213 HELLER EHR	7590 01/31/2008 MANIIP		EXAM	IINER
275 MIDDLEFIELD ROAD			SWEET, THOMAS	
MENLO PARI	K, CA 94025-3506		ART UNIT	PAPER NUMBER
		•	3774	
	•		MAIL DATE	DELIVERY MODE
	•		01/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

above, if checked. Any reply received by the Office later than three months after the mailling date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL . ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filling the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filling a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or Applicant's reply has overcome the following rejection(s): Description of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☒ Applicant's reply has overcome the following rejection(s): Double patenting and 35 USC 112 (2²n²d). 6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed:		Application No.	Applicant(s)					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 14 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. 1. ★ The reply was filed after a final rejection, but prior to or on the same day a filling a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance. (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.131. (1) (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) ★ The period for reply expires 3 months from the mailing date of the final rejection. b) ★ The period for reply expires 3 months from the mailing date of the final rejection. b) ★ The period for reply expires 5 months from the mailing date of the final rejection. b) ★ The period for reply expires 1 months from the mailing date of the final rejection. c) ★ The period for reply expires 5 months from the mailing date of the final rejection. b) ★ The period for reply expires 1 months from the mailing date of the final rejection. Complete Note: The Note of the Period of th		10/813,980	KNOWLTON, EDWARD WELLS					
The RAILING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 14 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. 1.	Before the Filing of an Appeal Brief	Examiner	Art Unit					
THE REPLY FILED 14. January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. No Property was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance, (2) a Notice of Appeal (with appeal fee) in complex with 37 CFR 1.131, or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:		Thomas J. Sweet	3774					
1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one or the following replies. (1) an amendment, effdavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.131; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) ☑ The period for reply expires ② months from the mailing date of the final rejection. b) ☐ The period for reply expires ② months from the mailing date of the final rejection. Examiner Note: Item Park REJECTION. See MEPP 108 (7): Extensions of time may be obtained under 37 CFR 1.138(a). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fee have been filed in the fire of the period of the filed of the filed in the filed period of the filed of the filed in the filed period of the filed of the filed period of the filed of the filed period of the filed period of the filed of the filed period of the filed within the filed period of the filed period of the filed period of the filed period of the filed within the filed within the months of the date of filing the Notice of Appeal was filed on	The MAILING DATE of this communication appe	ars on the cover sheet with the c	correspondence address					
this application, applicant must timely file one of the following replies: (1) an amendment, effidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.13; (7) (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) The period for reply expires 2 months from the mailing date of the Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: if box is checked, check there box (6) or (6), ONLY CHECK BOX (6) WHEN THE RIFST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MFEP 706.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed to the final rejection, and the corresponding amount of the fee. The appropriate extension fee have been filed to the final original set in the final Office action of CFR 1.176(a). The CFR 1.176(a) or CFR 1.176(a) or any extension thereof (37 CFR 4.1.37 must be filed within two months of the date of filing the Notice of Appeal was filed on the final dependence of the final rejection, even if timely filed, may request the filed within the time period set to thin in 37 CFR 4.1.37(a). The CFR 1.137(a) or Appeal (37 CFR 4.1.37(a), or any extension thereof (37 C								
b) ☐ The period for reply expires on. (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, with the statknory period for reply expire later than SX MONTHS form the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b), ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 70607(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period of reply originally set in the final Office action, or (2) as set forth in (b) above, if checked. Any reply receded by the Office later than three months after the mailing date of the final enjection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal as been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (c) ☐ They raise not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without cancelling a corresponding number of finally rejected claims. NOTE: ☐ (See 37 CFR 1.116(a) and 41.33(a)). 1. ☐	this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:							
been filed is the date for purposes of determining the period of extension and the corresponding amount of the feet. The appropriate extension fee under 37 CFR 1.17(a) to acclusted form. (1) the expiration date of the shortened statutory period for reply regionally set in the filed Office action; or (2) asset forth in (0) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any search patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 2. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s): but the non-allowable claims(s). 7. For purposes of appeal, the proposed amendment(s): a) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claims(s). 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not he entered and an explanation of how the new or amended	b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).							
of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. ☑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☑ Applicant's reply has overcome the following rejection(s): ☐ Double patenting and 35 USC 112 (2 nd). 6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☑ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☑ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) abjected to:	been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL							
3. ☑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: ☐ (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☑ Applicant's reply has overcome the following rejection(s): Double patenting and 35 USC 112 (2 nd). 6. ☐ Newly proposed or amended claim(s) ☐ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☑ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☑ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) objected to: ☐ Claim(s) allowed: ☐ Claim(s) elected: 1-39. Claim(s) objected to: ☐ Claim(s) withdrawn from consideration: ☐ Claim(s) withdrawn from consideration: ☐ Claim(s) withdrawn from consideration: ☐ Claim(s) rejected: 1-39. Claim(s) objected to: ☐ Claim(s) rejected: 1-39. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence filed after the	of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).							
(a)								
 5.	 (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 							
 Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) ☑ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 1-39. Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE In the affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)	The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).							
 7.	6. Newly proposed or amended claim(s) would be a	6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling						
 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)	7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) \(\omega \) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 1-39. Claim(s) withdrawn from consideration:							
and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 13. Other:	8 The affidavit or other evidence filed after a final action, b	out before or on the date of filing a	Notice of Appeal will not be entered					
entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 13. Other:	and was not earlier presented. See 37 CFR 1.116(e).							
REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 13. Other:	entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).							
See Continuation Sheet. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 13. Other: /Thomas J Sweet/	REQUEST FOR RECONSIDERATION/OTHER							
13. Other: /Thomas J Sweet/	See Continuation Sheet.							
/Thomas J Sweet/								
	13		* * * * * * * * * * * * * * * * * * * *					

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner rejected the limitation (" used to shape a thermal lesion") as if it was positively claimed. Positioning by hand is inherent as in positioning of the patient for access and liposuction is well known for providing aesthetic shaping. Additionally, the application discloses liposuction. Claims are intrepreted in light of the disclosure, but limitations from the disclosure are not incorporated in the claim. The rejections under 35 usc 102 and 103 are maintained..